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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 512

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

*vs.*

INTERNATIONAL UNION, PROGRESSIVE MINE WORKERS OF AMERICA, AND LOCAL NO. 403, PROGRESSIVE MINE WORKERS OF AMERICA, ET AL.

## REPLY TO PETITION FOR WRIT OF CERTIORARI

G. WILLIAM HORSLEY,
316 East Adams Street,
Springfield, Illinois,

Attorney for International Union, Progressive Mine Workers of America, and Local No. 403, Progressive Mine Workers of America, et al.

SCHNEPP & BARNES, PRINTERS, INC., SPRINGFIELD, ILL.

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The Petitioner bases its full argument as to why this Court should grant Certiorari, on the proposition that various Circuit Courts of Appeals have conflicting decisions with regard to the instant proposition, and therefore, this Court should grant Certiorari.

The Petitioner is in effect trying to say that this Court should find that the Seventh Circuit has stepped out of line because it has decided two cases adversely to the Petitioner.

We do not believe that the statement that the Seventh Circuit is at variance with other circuits is a correct statement. Each case must be considered in the light of appli-

cable facts. The facts of the instant case have been very plainly stated by the Court in its opinion. We see no need to belabor this matter by further enlarging the statement of facts contained in the opinion of the Court.

The Court specifically found that not a single employee had complained to the Board, nor did any single employee testify and complain as to any acts which had caused him any lack of employment, or any other loss of his rights.

The Petitioner relies upon the case of NLRB vs. Katz, 369 U.S. 736. In that case it must be remembered that the Company and the Union were negotiating for a contract at the time the Company committed the unilateral acts which were the basis for the unfair labor practice. It was upon that basis that the Board ordered its remedy which was affirmed by this Court.

The Petitioner also relies upon the case of Franks Brothers Co., Petitioner vs. NLRB, 321 U.S. 702. In that case the employees had just chosen the Union as their bargaining representative and the Union then attempted to negotiate with the Company without any success and the Company threatened to close the factory and committed many other unfair labor practices, and this Court held that the remedy was proper.

Again, in the case of NLRB vs. P. Lorillard Co., 314 U.S. 512, also relied upon by the Petitioner, the Company had absolutely refused to bargain with the Union and this was the basis for an unfair labor complaint, and this Court held that the remedy compelling the Company to bargain with the Union because of a showing that the Union had a majority status at the time of the refusal to bargain, was proper. But, here again, the facts are different than those involved in the instant case.

The situation in the instant case is almost identical with that found in Perry Coal Company vs. NLRB, 7th Circuit, 284 Fed. 2d 910, where the same Seventh Circuit ordered an election between the same two Unions that are involved in the instant case, only the shoe was on the other foot. In that case, there was absolutely no question but what Progressive Mine Workers had the majority status at the Perry Coal Company mine operated by Peabody Coal Company, and that the Company committed unfair labor acts and absolutely refused to bargain with Progressive even though Progressive had demanded bargaining, after the Company had cancelled the contract. The Circuit Court of Appeals ordered an election and this Court denied Certiorari.

The situation in the instant case is identical with the Perry Coal case except that we believe the instant case is even stronger than the Perry case. In the instant case, a new corporation started doing business and hired only the coal miners that it thought were good employees, it being admitted that the men had no job rights under the new corporation. If there was any duty to bargain with UMWA it was simply based upon a successor employer operating the same kind of business with substantially the same employees and some of the same management as before. The Seventh Circuit did not hold squarely on the proposition as to whether or not Center Point was a successor corporation.

However, we point out that in the instant case the Court in its opinion said,

> ". . . None of the employees of Center Point, nor any former employee of Quality i a charging party or complainant in these proceeding . No employee has complained of any coercion. The primary objective of Congress in enacting the National Labor Relations

Act was to achieve stability of labor relations. Colgate-Palmolive-Peet Co. vs. NLRB, 338 U.S. 355, 362. And, in Brooks vs. NLRB, 348 U.S. 96, 103, it was pointed out that 'the underlying purpose of this statute is industrial peace. To allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to that end, it is inimical to it.' We are of the opinion that it would be equally disruptive of a peaceful status quo to here enforce the Board's order that Center Point be now required to bargain with UMW, the charging party. The situation is similar to that which was presented in Perry Coal Co. vs. NLRB, 7 Cir., 284 F. 2d 910 and 291 F. 2d 126, cert. den. 366 U.S. 949, where we held that there need be no bargaining with any union until after a Board-conducted election. The interest of industrial peace, a cardinal purpose of the Act, as well as its spirit and intent, here require only that the employees involved be permitted to express their existing choice concerning collective bargaining representation in an atmosphere free from employer assistance to any union."

It is further significant in the instant case that the Seventh Circuit reversed the Board on the facts and said:

> "We conclude that the record considered as a whole does not support findings or conclusions that Center Point conditioned employment on membership in Progressive or that the employees' membership in Progressive and the payment of dues and assessments were the result of coercion. The rationale of Local 60, Carpenters vs. NLRB, 365 U.S. 651, and Perry Coal Company vs. NLRB, 7 Cir. 284 F. 2d 910, is applicable here."

The foregoing is important because as the Court pointed out the membership was not coerced into joining Progressive and the Court specifically rejected the argument of the Petitioner in its Statement of Facts that the statements of Carl Kumpf were coercive. We call the attention of this

Court to the opinion of the Seventh Circuit, particularly that portion found on pages 30 and 31 of the Petition for Certiorari. It must be remembered that the facts in this case were absolutely undisputed and the conclusions reached based upon undisputed facts.

We respectfully submit that if the facts in the instant case were disputed, or in any way showed that any employee had been mistreated, or lost his job, or lost any rights, then we might have a different situation. However, we respectfully submit that the decision of the Circuit Court of Appeals in the instant case is not in conflict with any previous holding of this Court or any other Circuit Court of Appeals considered in the light of the facts applicable in the instant case, and, therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

G. WILLIAM HORSLEY,
316 East Adams Street,
Springfield, Illinois,

Attorney for International Union, Progressive Mine Workers of America, and Local No. 403, Progressive Mine Workers of America, et al.